Supreme Court, U.S.
FILED

(1)

Number: 97-1767 APR 28 1998

OFFICE OF THE CLERK

In The
Supreme Court of theUnited States
October Term, 1998

William J Carlyle Jr
Petitioner

v

Angus Saint-Evens,
Kenneth Hopkins, and
Dorothy McGee
Respondents

On Petition For Writ of Certiorari
To The United States Appellate Court, Ninth District

PETITION FOR WRIT OF CERTIORARI

IN PRO SE
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21pp

QUESTIONS PRESENTED FOR REVIEW

Preface

In 1985 petitioner, William Carlyle, purchased real estate, located in Glenn County, California through respondents Angus Saint-Evens, the estate's attorney, and Dorothy McGee, the estate's administratrix. A dispute arose and petitioner unsuccessfully attempted to rescind the sale. Petitioner filed suit in pro per in the Glenn County Superior Court, alleging rescission and fraud. In the interim, Saint-Evens had been appointed a Glenn County judge.

From the beginning of the action petitioner experienced a plethora of 'strange' decisions on the part of the Glenn County Superior Court. He motioned for change of venue, which was refused. After further problems with the Glenn County Superior Court, petitioner filed suit in US District Court.

Petitioner lost the state case against Saint-Evens and McGee and in it's decision at the end of the trial, the California court 'suggested' that petitioner could choose the amount of sanction the court would impose, " from 0 to $10,000", if petitioner would agree to drop the pending Federal suit and not appeal that (state) court's decision. Petitioner refused and was sanctioned about $20,000. Shortly afterwards the decision from the Federal Court was announced, favoring the defendants.

Petitioner appealed the Glenn County Superior Court's decision to the California State Court of Appeals. But due to non-stop 'errors' on the part of the Glenn County clerks and court reporters, petitioner was forced to file a second Federal suit. That case was also

later decided in favor of defendants.

Petitioner's appeal to the upper court in the Glenn County case mirrored some of the problems he had with Glenn County. Ultimately the appellate court rejected the appeal and the California Supreme Court declined to comment.

Petitioner then filed this third Federal action against Saint-Evens, his attorney, Kenneth Hopkins, and Dorothy McGee. He also requested the District Court to allow the naming of the State of California as a defendant, based on an alleged practice of discriminating against 'pro pers'.

QUESTIONS

1) In light of the fact that defendant Saint-Evens was a judge, were petitioner's rights to a fair trial violated by allowing the trial to remain in Saint-Evens' home court?

2) May a state court use it's power of sanction to eliminate the right to appeal by threats of more severe sanctions after the fact?

3) Are 'pro pers' a class as defined in 42 USCA 1985?

4) Is summary judgment based on res judicata proper, when new facts have changed the action?

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STATEMENT OF JURISDICTION GOVERNING REVIEW ON A WRIT OF CERTIORARI

Petitioner believes that the United States Court of Appeals for the Ninth Circuit, in it's agreement with the district court, Eastern District of California, has decided an important question of federal law that has not been, but should be, settled by this court, or in the alternative, has decided an important federal question in a way that conflicts with relevant decisions of this Court. Operant statutes are 42 USC 1983 & 1985.

Petitioner requested rehearing of the finding of U S Court of Appeals, Ninth Circuit, on December 31, 1998. This was denied on January 28, 1998, less than 90 days from the date of this petition. See Appendix, page 16.

INTRODUCTION

The basis of this Federal suit dates back to 1985 when at that time, petitioner, William Carlyle, purchased 24 acres from the Melvin Jennings estate, located in Glenn County, California. He deposited $26,100 with defendants Angus Saint-Evens, the estate's attorney and Dorothy McGee, the estate's administratrix. Several months later it was discovered that the property had several major flaws, flooding being one of the foremost. Petitioner informed Saint-Evens of the problems as they became known but was put off by Saint-Evens' false statements and after several months abondoned the property. He wrote both defendants Saint-Evens and McGee rescinding the sale and requested his down payment returned. Neither parties responded to his letters and about a year later they caused the property to be foreclosed upon. Petitioner filed suit in pro per in the Glenn County Superior Court, Number 21673, alleging rescission and fraud. In the interim, unknown to petitioner, Saint-Evens had been appointed a Glenn County judge.

Shortly after the start of the proceedings in the case, a judge from the same court as Saint-Evens', made a finding that petitioner's rescission, made several years earlier, was (in some way) nullified based on the theory of res adjudicata. Thus began petitioner's experiencing a plethora of 'strange' decisions on the part of the Glenn County Superior Court. Admittedly, some were from petitioner's own ignorance of the law and court procedure. But not all. After petitioner discovered that defendant Saint-Evens had been appointed a judge, he became more aware of the intentional roadblocks that were being erected by the Glenn County Superior Court to discourage him from pressing his suit. He twice motioned for change of venue: the first was denied outright, based on a Glenn County judge's determination that there would be no disadvantage to petitioner even though Saint-Evens happened

to be be a judge in the same county (and courthouse) as the one that he would ultimately be judged in. The second motion was refused to be filed by one of the clerks (who worked with Saint-Evens), citing outdated code sections. During this time, petitioner, finding that things were going from bad to worst, filed suit in US District Court, Eastern District of California, case number CIV-S-91-1471 WBS. He alleged a list of grievances that had taken place up to that time: that first Federal suit was still undetermined at the time of the (state) trial court's decision in the Glenn County case against defendants.

In it's decision at the end of the trial, the California court found for the defendants Saint-Evens and McGee and 'suggested' that petitioner could choose the amount of sanction the court would impose, " from 0 to $10,000", if petitioner would agree to drop the pending Federal suit and not appeal that (state) court's decision. Petitioner refused and was sanctioned about $20,000. Shortly afterwards the decision from the Federal Court was announced, favoring the defendants.

Petitioner appealed the state court's decision to the California State Court of Appeals, 3rd District, Case Number 3 Civil C015746. But perfecting the appeal took many months due to so many 'mistakes' on the part of the Glenn County court system, primarily by the clerks and court reporters. Petitioner was overcharged almost $2,000 for court reporter charges (later refunded). Various pre-trial transcripts were claimed to be unuseable. According to documents supplied by the court, rats ate one, flood water destroyed another, and spilled tea made a third unreadable. On several occasions, the Glenn County clerks certified to the California Court of Appeals that all transcripts had been completed, when in reality they had not. One court reporter in particular had been ordered to deliver relevant transcripts, and his continual refusal

was one of the major reasons petitioner filed a second Federal suit, Case Number CIV-S-94 1347 GEB JFM. That case was decided in favor of defendants on June 15, 1995.

In petitioner's state court appeal, one of the foremost claims was that the trial court had not allowed petitioner to call an adverse witness to the stand, a basic right according to California case law. Although the court of appeals countered most of petitioner's claims, even the most obscure ones, they failed to even mention, let alone address his claim that he was not allowed to call an adverse witness to testify. A request for rehearing, specifically noting the adverse witness issue, again produced no response as to the witness issue and was denied. A subsequent appeal to the California Supreme Court produced no response.

This brings us to the present question of the Federal court's latest determination that petitioner's two prior Federal suits against defendants render this third complaint impotent based on the legal theory of res adjudicata and that any further amendment would be futile.

ARGUMENT

In reviewing the two prior Federal suits against the named defendants, it is seen that although there were many allegations, the purpose behind both actions was to force the respondents and the Glenn County court system to cease the abuse of the legal process in covertly defending (primarily) Saint-Evens against petitioner. In the first Federal case, Number CIV-S-91-1471, it was alleged that defendants and several Glenn County judges were trampling on petitioner's rights. The purpose behind that suit was an attempt to force the Glenn County Superior Court to abide by California law, instead of showing favoritism to one of their own judges. In the second Federal suit, case number CIV-S-94-1347 GEB, further allegations of new violations by defendants and the

Glenn County's clerk's office were stated: specifically petitioner's property had been put up for sale by the San Luis Obispo County Sheriff and his (state) appeal had not been perfected due to one of the court reporter's withholding of his transcript of a critical hearing. Despite this, the Glenn County clerk had twice falsely certified that the transcripts were complete. In both federal actions, the underlying theme of petitioner's allegations were that the state action was being trashed because one of the defendants was a California judge.

This third action filed with the US District Court, Eastern District of California, is Case Number CIV-S-96-1300 DFL. In the Appendix is the Memorandum and Order filed by the district court. Basically it states that many of the allegations from the previous two federal suits are repeated in this present action. Petitioner agrees. But the thrust of this present action was not based solely on the old allegations. And petitioner maintains that none of the allegations have been finally adjudicated, due to the taint of alleged civil rights abuse. The reason they were referenced was to show proof to the court of the magnitude of the abuse petitioner had to bear in an attempt to receive a fair and impartial hearing.

Taken out of context, petitioner's prior allegations, if proven, would tend to show only that the Glenn County court system was bumbling and inefficient. There would be no reason for Federal intervention. But when woven into a complete quilt, the picture changes. Petitioner has made new allegations and to lend support to their credibility, included the prior allegations. The basis for these new allegations had only become reality after the date of the dismissal of the second Federal action. One of the primary ones was the refusal of the California State Court of Appeals, Third District, case number 3 Civil C015746 (and later the California Supreme Court) to consider petitioner's claim of not being allowed to call an available adverse witness; even after specifically being

addressed in petitioner's request for rehearing.

Petitioner also attempted to include the State of California as a defendant on the theory that there is an unspoken agreement in the state court system that is predominantly applied: pro per representation is not favored in the upper courts. If involved in litigation against another party who is represented by an attorney or the state, the pro per generally loses, with little attention paid to the merits of his/her argument. And more to point, if a pro per attacks a California judge (as in this case), state statutes and case law are thrown out the window: judge wins, pro per loses.

It is noteworthy that the district court made no comment on petitioner's allegations of conspiracy. Conspiracy to interfere with petitioner's civil rights is covered by 42 USC 1985 and while he did not refer to it, the allegations in the complaint were sufficient that should allow an action on the basis of Section 1985. Pro pers, of which petitioner is a member, are a 'class' of individuals, as defined by 1985. And even though they are not awful popular with the court system, a pro per (se) is an important segment of the rights guaranteed in the U S Constitution.

> "Public official's son-in-law who sought to testify against official in grand jury investigation, but was allegedly intimidated in attempt to prevent such testimony, had standing to maintain action under statute prohibiting conspiracy to interfere with civil rights, even though son-in-law was mere witness, not a party to action; stature's reference to remedies available to "party" would not be so narrowly construed, in view of statute's purposes." Citation: Gerakaris v Champagne, D Mass. 1996, 913 F Supp 646.

Petitioner realized that this present complaint before the court was flawed and had requested the district court in this

third Federal action to allow amendment of the complaint. This was refused and a request for rehearing was denied on January 28, 1998.

> "A pro se plaintiff, particularily one bringing a civil rights action, should be afforded an opportunity fairly freely to amend his complaint." Case Cited; Holmes v Goldin, CA2 (NY)1980, 615 F2d 83, on remand 566 F Supp 863.

Petitioner maintains California courts are using their powers of sanction to violate parties' civil rights to appeal. As previously stated, at the end of the Glenn County trial, petitioner was 'threatened' with a much increased sanction if he refused to give up his rights of appeal and drop the first Federal suit against defendants. When petitioner did refuse, he was sanctioned about $20,000, instead of the 'suggested' maximum of $10,000. If there is a Federal right to a fair hearing, it would seem there is also a right to appeal erroneous decisions without giving up that right under the threat of sanctions.

CONCLUSION

Petitioner is well aware that he has made innumerable mistakes over the last 13 years in which he has attempted to receive a fair and impartial hearing. While it is obvious that anybody who loses a legal battle, can cry 'foul', there are several extraordinary facts that are not found in a normal action. Saint-Evens was a judge at the time of the suit. And the court in which he was a part of, in effect, passed judgment on him. All decisions to date have expressed little interest in that fact. Yet, judges ARE a group unto themselves. Most are held in high esteem and appear to be are very careful of their reputations.

In light of the state appeals court's decision, it is questionable whether any California court is capable of

conducting a fair hearing, concerning Saint-Evens.

Any Supreme Court justice who reads this petition might ask him/herself: "If I had to pass judgment on one of my fellow judges, could I honestly do so completely without prejudice?" Looking at it from a common sense viewpoint, how could one judge in the same court, make a totally unbiased decision against one of his fellow judges? One who he knows he will have to live with, as long they remain in the same court. The continuous thread throughout petitioner's struggle, is that he could not, nor did not receive fair treatment in the California state court system due primarily to Saint-Evens judgeship. When petitioner appealed judge Levy's decision in this case at bar, he made reference to the 1997 Edition of California Rules of Court (Federal), and the Appeals from District Court (section), page 12, in which the following policy statement was found.

> "The court on occasion calls upon district judges to sit on panels when there are insufficient circuit judges to constitute a panel. It is court policy that district judges not participate in the disposition of appeals from their own districts. In addition, the court attempts to avoid assigning district judges to appeals of cases over which other judges from their district have presided (either on motions or at trial) as visiting judges in other districts."

Petitioner can fathom no reason for that position other than to encourage unbiased decisions. Are we missing something here? If the reason for this is to avoid even the implication of predjudice, what justification can be shown for California judges being allowed to PASS JUDGMENT on one of their own? Is California allowed to work by a different set of rules? Petitioner has searched extensively in California case law for instances in which the defendants were judges. Since none were found, one can infer that the situation is rare, if not

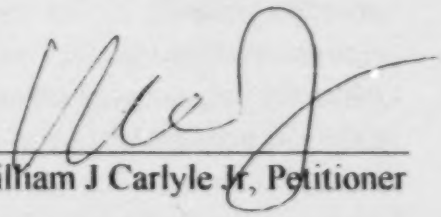
nonexistant. Is the reader to believe that judges can do no wrong; or is there an agreement in the California courts providing complete immunity from all prosecution? The present defendants appear very sure of their position in the court system, since they chose not to make any response to the appellate brief in this latest Federal action.

Petitioner has been cast as a malcontent, pursuing his claims, not to obtain justice, but to merely harrass the respondents. But petitioner is confused. His only 'legal' experience is out of law books, over which he has spent thousands of hours. The written versions of California statutes and case law do not always match the court's practical treatment of California law. As in this case at bar.

The US Court of Appeals, Ninth Circuit, has agreed with the lower court in it's decision favoring defendants. Rehearing was denied on December 17, 1997. Petitioner agrees that some of the claims he had made in this latest Federal case, duplicated claims made in one or both of the two previous Federal actions. He also agrees that the District Court has no authority to relitigate those claims. But one of the purposes of including those prior claims was to illustrate to that court, and any reviewing court, that there was an ongoing and persistent abuse of petitioner's civil rights to a fair trial. While the District Court apparently may not rule on that issue, this Supreme Court may, if it so chooses.

Petitioner requests this Supreme Court to grant this petition for a writ of certiorari.

Date: April 22, 1998

Signed 

William J Carlyle Jr, Petitioner

APPENDIX

COPYS OF COURT ORDERS
(The most recent, last)

Note: Petitioner is petitioning this court of last resort from an order from the U S Court of Appeals Ninth District. But in it's decision, that court referenced the District Court's (Eastern District) decision and affirmed it without any further background information. Therefore petitioner has included a copy of the district court's memorandum and order below.

(File Stamp) February 11, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

WILLIAM J CARLYLE JR, PLAINTIFF
V
ANGUS SAINT-EVENS,et al, Defendants
Case CIV-S-96-1300 DFL GGH

MEMORANDUM OF OPINION AND ORDER

"Plaintiff alleges that defendants violated his civil rights by denying him the right to a fair trial. Defendants move to dismiss the complaint, or in the alternative, for summary judgment. I

(Footnote: Because oral argument would not be of material assistance, the court orders this matter submitted on the briefs. E D Cal Local Rule 230(h).)

In 1985, plaintiff William Carlyle purchased a piece of real property from the estate of Melvin Jennings. Defendant Dorothy McGee was the Administratrix and defendant Angus Saint-Evens was her attorney. After purchasing the property, Carlyle abondoned it apparently because he believed that the property was not as represented and, In particular, was subject to flooding. Defendants McGee and Saint-Evens instituted a foreclosure proceeding. Carlyle subsequently filed a suit in Glenn County Superior Court against McGee and Saint-Evens. Between the time of filing and the trial, Saint-Evens was appointed a judge to the Glenn County Superior Court. Carlyle attempted to change venue on the basis that he could not receive a fair trial in Glenn County Superior Court because Saint-Evens was a part of the judiciary in that county. His requests were denied, and the case proceeded to trial. The trial resulted in a judgment for defendants. Carlyle appealed the judgment to the Third District Court of Appeal. In 1996, the appellate court affirmed the lower court ruling, and the California Supreme Court declined to accept the matter for review. Carlyle then filed this suit alleging a violation of his constitutional rights.

Defendants contend that Carlyle's suit is precluded by res judicata. Res judicata, or claim preclusion, bars all grounds for recovery which were or could have been asserted in a proir suit

between the same parties on the same cause of action. Constantini v Trans World Airlines, 681 F2d 1199, 1201 (9th Cir) (citing Ross v IBEW, 634 F2d 453, 457 (9th Cir 1980)), cert denied, 459 US 1087 (1982). This is Carlyle's third federal suit arising out of his case in Glenn County Superior Court. His claims in this suit appear to either duplicate or arise directly from his claims in his earlier suits.

In 1991, Carlyle filed a civil rights action against Saint-Evens, McGee, and others in the Eastern District of California, Civ-S-91 1471 WBS GGH. His complaint alleged that the Glenn County Superior Court and other defendants were supposedly delaying the proceedings and making it difficult for Carlyle to pursue his claim. Furthermore, he alleged that the denial of the change of venue violated his rights. In granting defendant's motion for summary judgment, the court held that "(a)ny errors or irregularities committed by defendants were not sufficient to constitute a denial of due process or to form the basis for relief under section 1983 because they do not render the court proceedings a nullity." CIV-S-91 1471 WBS GGH, Memorandum of Opinion and Order, April 8, 1993. Judgment was entered in favor of defendants on April 8, 1993.

In 1994, Carlyle again filed suit against Saint-Evens and McGee in the Eastern District of California, CIV-S-94 1347 GEB JFM. This suit focused on the alleged misconduct of the defendants during the time Carlyle was pursuing his appeal from the Glenn County Superior Court. Carlyle alleged that defendants had conspired to

cause an illegal lien to be placed on property he owned in San Luis Obispo under the guise of an enforceable judgment from the Glenn County Superior Court. He also claimed that the clerk of the Glenn County Superior Court had delayed transcribing and sending him transcipts of the proceedings in the case, thus hampering his ability to pursue his appeal. The federal court granted defendant's motion for summary judgment on June 15, 1995 and judgment was entered in favor of defendants on that date.

Carlyle's claims in this case mirror the claims alleged in the 1991 and 1994 lawsuits. He claims that his constitutional rights to a fair and impartial trial has been violated because of (1) the denial of change of venue; (2) the placing of a lien on his San Luis Obispo property; (3) false statements made regarding the completeness of trial transcripts. All of these claims have been finally adjudicated. They are therefore barred by res judicata.

Carlyle additionally claims that his rights have been violated because the state appellate court affirmed the lower court and the California Supreme Court declined to review his case. Carlyle alleges that the California courts give short shrift to unrepresented parties and that the ruling of the California Court of Appeal was "out of sync" with California law. However, the judgment of the state court is not subject to review in this court. See, eg, District of Columbia Court of Appeals v Feldman, 460 US 462, 476,(1983); Rooker v Fidelity Trust Co, 263 US 413, 415-16 (1923). This is true even when federal

constitutional issues are at stake. See Mullins v State of Oregon, 57 F3d 789, 792 ((9th Cir 1995) (citing Worldwide Church of God v Nair, 805 F2d 888, 891 (9th Cir 1986)). Indeed, the state court judgement is binding as to the very matters that plaintiff now seeks to relitigate. See Migra v Warren City Sch Dist, 465 US 75, 83 (1984) (holding that claim preclusion operates to bar federal section 1983 suit based on claims already fully litigated in state court); Allen v McCurry, 449 US 90, 97-98 (1980) (holding that state court litigation has federal estoppel effect in subsequent federal action under section 1983). Accordingly, defendants are entitled to summary judgment. 2

Carlyle had requested leave to amend his complaint to add the State of California as a defendant. Because no responsive pleading has been filed in the case, the request for leave to amend is governed by Rule 15. Leave to amend "shall be freely given when justice so requires." Fed R Civ P 15 (a). However, the court may deny leave to amend if the proposed amendment is futile or would be subject to dismissal. Saul v United States, 928 F2d 829, 843 (9th Cir 1991).

In this case, Carlyle's requested amendment is futile. Carlyle's claims are under section 1983, and the State is not a "person" within the meaning of section 1983. Will v Michigan Dep't of State Police, 491 US 58, 65-66 (1989). Furthermore, the Eleventh Amendment protects the state from suit in federal court. See, eg, Ouern v Jordan, 440 US 332, 344-45 (1979). 2(Footnote: Defendants have shown restraint in not seeking sanctions in this matter. It is improper to use this court to attempt

to relitigate settled matters. Futile attempts by plaintiff to relitigate these settled matters could subject plaintiff to the costs of suit, including attorney fees, and other monetary sanctions.)

Accordingly, plaintiff's request to amend his complaint is DENIED. Defentant's motion for summary judgment is GRANTED. Judgment shall be entered accordingly. IT IS SO ORDERED." Dated: 10 February 1997. Signed by David F Levi, United States District Judge

(Petitioner Filed Notice of Appeal on 3/10/97)

(File Stamp) Dec 17, 1997

Not For Publication
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Number 97-15637 DC No CV-96-01300-DFL Eastern California (Sacramento)

William Carlyle Jr, Plaintiff-Appellant
v
Angus Saint-Evens; Dorothy McGee; Kenneth Hopkins, Defendants-Appellees

MEMORANDUM*

Appeal from the United States District Court for the Eastern District of California

David F Levi, District Judge, Presiding

Submitted December 15, 1997**

Before: Sneed, Leavy, and Trott, Circuit Judges.

"William J Carlyle appeals pro se the district court's grant of summary judgment in his 42 USC Section 1983 civil rights action against Angus Saint-Evens and other defendants involved in Carlyle's state court action regarding the purchase of real property. We have reviewed the record and affirm for the reasons stated by the district court in its Memorandum of Opinion and Order, filed on February 11, 1997. **AFFIRMED.**"

(* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir R 36-3.)

(** The panel unanimously finds this case suitable for decision without oral argument. See Fed R App P 34 (a); 9th Cir R 34-4. Accordingly, Carlyle's request for oral argument is denied.)

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(Petitioner Requested Rehearing on 12/31/97)

(File Stamp) January 28, 1998

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Number 97-15637 DC No CV-96-01300-DFL

Eastern California (Sacramento)

William Carlyle Jr, Plaintiff-Appellant

v

Angus Saint-Evens; Dorothy McGee; Kenneth Hopkins, Defendants-Appellees

ORDER

Before: Sneed, Leavy, and Trott, Circuit Judges.

The petition for rehearing is denied.

(end of document)